

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

STERLING STAMPING COMPANY

And

Case No. 7-CA-48422

**LOCAL 174, INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW) AFL-CIO**

Richard Czubaj, Esq., Counsel for the General Counsel.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me in Detroit, Michigan on June 29, 2005.¹ The Complaint herein, which issued on May 3, and was based upon an unfair labor practice charge and an amended charge that were filed on March 15 and May 3 by Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO, herein called the Union, alleges that Sterling Stamping Company, herein called Respondent, violated Section 8(a)(1)(5) of the Act by unilaterally canceling dental insurance for its unit employees on about January 31, and by failing to make its required annual contribution to the pension plan for its unit employees on about March 1, both without agreement of the Union.

Findings of Fact

I. Jurisdiction

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization Status

Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. Facts and Analysis

The Union is the collective bargaining representative of the Respondent's production and maintenance employees, but excluding office clerical employees, plant clerical employees, professional employees, office janitors, plant guards and supervisors as defined in the Act. The last contract between the parties was dated February 29, 2000 and was effective for the period February 29, 2000 through February 29, 2004, and was extended by agreement of the parties to February 28, 2005. Only two provisions of this agreement are in issue herein, the dental

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2005.

coverage and the pension contribution. Article VIII, Insurance, provides: “Dental Insurance: Starting with the second year of the contract, the company agrees to provide a Basic Dental Plan with a \$50.00 deductible.” The other provision, Article XI, Retirement Program, states, *inter alia*: “The Company will make a \$17,000 contribution to the pension plan for each of the four (4) years of the contract. Contributions will be made by 3/1/2001, 3/1/2002, 3/1/2003 and 3/01/2004.” Article XIV of the Agreement, Duration, states, *inter alia*:

This Agreement shall become effective on February 29, 2000 and shall remain in force until 11:59 PM February 29, 2004 and thereafter for successive periods of one (1) year unless either party shall, on or before the 60th day prior to expiration, serve written notice on the other party of a desire to terminate, modify, alter, renegotiate, change or amend this Agreement.

In about February 2004, the parties entered into an “Amendment To Sterling Stamping Company and New West Side Local 174 February 29, 2000 to February 28, 2004 Agreement.” This Agreement states, *inter alia*:

The February 29, 2000 to February 29, 2004 Agreement, hereinafter “Agreement,” will be extended to February 28, 2005. The terms, conditions and benefits in the Agreement shall remain the same until February 28, 2005, at which time the parties shall meet to negotiate a new labor contract...

The hourly rate for each classification of unit work shall be frozen at the hourly rate as of February 29, 2004 for the entire one year extension.

The .35 cents per hour and the COLA increases set forth in the Agreement will not be applicable to this Amendment. By way of example, a Q.C. Operator at \$17.50 per hour as of February 28, 2004 shall remain at that rate until March 1, 2005 or when a new labor contract is negotiated.

Each unit employee employed as of February 19, 2004 shall be paid \$25.00 on March 31, 2004; August 31, 2004; November 30, 2004 and February 28, 2005.

No new contract has been negotiated.

The evidence establishes, and the Respondent does not deny, that it discontinued the employees’ dental coverage on about February 1, and that it did not make the required \$17,000 pension contribution on March 1. Clearly, pension contributions and medical and dental benefits are mandatory subjects of bargaining, and unilateral actions in their application are proscribed by the Act. *Stevens & Associates Construction Co.*, 307 NLRB 1403 (1992); *Compu-Net Communications, Inc.*, 315 NLRB 216, 222 (1994); *Paul Mueller Company*, 335 NLRB 808 (2001); *Posados de Puerto Rico Associates, Inc. v. NLRB*, 243 F.3d 87, 91 (1st Cir. 2001). The law is also clear that financial distress is no defense to a failure to pay these benefits without the required negotiations with, or the approval of, the Union.

Sheila Draper, who is employed by the Respondent and is the Union’s Recording Secretary, testified that at a dentist appointment in mid-February she was told that a bill had not been paid by the insurance carrier. When she called the insurance company, she was told that the policy was cancelled on February 1 for nonpayment by the Respondent. She testified further that prior to this time, the Respondent had requested permission to cease providing the dental coverage. The Union responded that cancellation of the coverage would be contingent upon the Respondent providing information to prove that that it needed this concession, but the

Respondent never provided this information to the Union. She also testified that prior to March 1, during negotiations, Scott Beddenger, Respondent's President, told them that the Respondent had not made the \$17,000 pension contribution required by the contract. The Respondent never requested permission to forego this payment and the Union never gave the Respondent permission to withhold this \$17,000 payment.

5 Dale Nelson, the Union's third Vice President who has serviced the Respondent's facility since March, testified that during negotiations, the Respondent asked the Union for concessions, including wage concessions and elimination of the dental plan. The Union responded that it would consider the concessions, and would agree to the elimination of the dental plan, if the Respondent provided the Union with certain financial information relevant to its claim of financial difficulty so that the Union could audit the Respondent's books; however, the Union never gave the Respondent permission to eliminate the dental plan in February or earlier. On March 23, Nelson wrote to Beddenger, specifying the information that was needed, concluding: "As soon as you have provided the requested information, the sooner the audit can be completed and the sooner our agreement can be implemented." Beddenger called Nelson and told him that if he returned in an hour, Beddenger would have some information for him. Nelson went to Respondent's facility and picked up an envelope that Beddenger left for him, but it did not include the information that the Union was asking for. Nelson testified further that, in early April, Scott Beddenger's father, Rick Beddenger, Respondent's General Manager, who had a good relationship with the Union, called the Union and said that without the concessions, including the elimination of the dental plan, the Respondent would "go under." So, on about April 4, the Union agreed:

25 that they could implement the concessions, which included the elimination of the dental plan, based on the outcome of the audit. If the audit showed that they were financially responsible, they would have to go back to the contract. If the audit showed that they were truly in need, then they could implement...the concessions, but that wasn't until April.

30 The Union still has not received the financial information that it requested from the Respondent in order to audit its financial records. In addition, the Union never gave the Respondent permission to forego the \$17,000 pension contribution for 2004 that was due to be paid by March 1, 2005.

35 The Board has long held that health and welfare and pension plans which are part of an expired contract, survive the expiration of the contract because they constitute terms and conditions of employment of the employees covered by the contract. In *Henry Cauthorne, An Individual, t/a Cauthorne Trucking*, 256 NLRB 721 (1981), the Board stated:

40 Thus, an employer may not unilaterally alter payments into such plans [health and welfare and pension funds] unless: (1) the changes are made subsequent to the parties reaching a bargaining impasse and the union has rejected the changes prior to the impasse, (2) the employer demonstrates that, at the time the changes were made, the union did not represent a majority of the unit employees or that the employer had a good-faith doubt, based on objective considerations, of the union's continuing majority status, or (3) the union has waived its right to bargain regarding the changes. [citations omitted]

50 It is clear that none of these events occurred herein. I therefore find that both the dental plan and the pension plan contribution provisions of the contract survived the expiration of the contract as well as the contract extension. As the Respondent failed to make the 2004 pension

contribution by March 1, 2005 it has violated Section 8(a)(1)(5) of the Act. In addition, the Respondent discontinued its payments into the dental plan on about February 1, also without the Union's approval. This also violates Section 8(a)(1)(5) of the Act. Counsel for the General Counsel conceded that on about April 4, the Union gave the Respondent permission to cease making payments to the dental plan, contingent upon its providing the Union with financial information necessary to audit the Respondent's books. This violation therefore runs from February 1 to April 4.

Conclusions of Law

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. By failing and refusing to make contractually required dental plan payments for its unit employees from February 1, to April 3, 2005, and a \$17,000 pension plan contribution for its unit employees by March 1, 2005, the Respondent violated Section 8(a)(1)(5) of the Act.

The Remedy

Having found that the Respondent violated Section 8(a)(5) of the Act by discontinuing its dental plan coverage for unit employees from February 1 through April 3, 2005, and that it failed to make a required \$17,000 payment for its unit employees' pension fund, I shall recommend that Respondent be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act. I recommend that the Respondent be ordered to make the required payments to the unit employees' dental plan for the months of February and March 2005. The Union gave the Respondent permission to cease making these payments beginning in April 2005, contingent upon the Respondent submitting to the Union certain financial information necessary for the Union to audit the Respondent's financial records. At the time of the hearing, the Respondent had not provided the Union with this information. In the absence of this requested financial information, the Union may withdraw this concession granted to the Respondent. In order to do so, the Union shall notify the Respondent, in writing, that because it has not furnished the Union with the requested information, it must resume making the contractually required payments to the dental plan. This obligation will resume on the first day of the month following the Union's notification to the Respondent. I shall also recommend that the Respondent be ordered to pay to the pension fund for its unit employees the amount of \$17,000, that was due by March 1, 2005, plus interest, if any. Further, if any unit employee had any dental expense between February 1 and April 4, 2005 that would have been covered by the contractual dental plan, I shall recommend that the Respondent be ordered to reimburse the employees, if any, for the amount that the dental plan would have covered.

On these findings of fact and conclusions of law and on the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended²

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Sterling Stamping Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Unilaterally discontinuing the dental insurance plan and the payments for the pension plan for its unit employees.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make the required payments for the dental insurance plan for its unit employees for the months of February and March 2005, and make the \$17,000 payment for the pension plan for its unit employees for the year 2004 that was due to be paid by March 1, 2005.

(b) Make whole any employee who had dental expenses between February 1 and April 3, 2005 that would have been covered by the contractual dental plan, but were not because the Respondent had unilaterally discontinued the plan for the months of February and March 2005.

(c) Within 14 days after service by the Region, post at its facility in Brighton, Michigan, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 2005.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

Joel P. Biblowitz
Administrative Law Judge

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX**NOTICE TO EMPLOYEES**

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

WE WILL NOT unilaterally cease making payments to the dental insurance plan and the pension plan for our unit employees as set forth in our collective bargaining agreement with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) AFL-CIO and its Local 174 ("the Union").

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

We WILL pay to the dental insurance plan the monthly premiums for February and March 2005, and **WE WILL** pay to the pension plan the amount of \$17,000, plus interest if any, that was due by March 1, 2005.

WE WILL make whole any employee who had an unreimbursed dental expense between February 1 and April 3, 2005 that would have been covered by the contractual dental plan but was not covered because of our failure to pay the premiums for this plan in February and March 2005.

STERLING STAMPING COMPANY
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Federal Building, Room 300

Detroit, Michigan 48226-2569

Hours: 8:15 a.m. to 4:45 p.m.

313-226-3200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 313-226-3244.

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